ABA Business Law Section Consumer Financial Services Committee – 2019 Winter Meeting
Miami, FL

LEP: Piecing the Puzzle Together

Presented by: Housing Finance Subcommittee

Sunday, January 13, 2019
10:00 a.m. – 11:00 a.m.
LEP: Piecing Together the Puzzle

Moderator: Fed Kamensky, Member, Weiner Brodsky Kider

Panelists:
• Jacqueline Ledon, Staff Attorney, Legal Services of Greater Miami, Miami, FL
• Elizabeth Kemp, Associate General Counsel, Fannie Mae, Chicago, IL
• Tobias Moon, Partner, Husch Blackwell LLP, Dallas, TX
Agenda

• Federal Law Issues
  • CFPB Considerations
  • CFPB Enforcement Actions
  • GSEs/FHFA/HUD

• State Law Issues
  • Statutory Examples

• Practical Implications
Federal Law Issues

• Executive Order 13166
  • “Improving Access to Services for Persons with Limited English Proficiency” (Aug. 11, 2000)
  • Requires Federal agencies to examine the services they provide, identify any need for services to LEP Persons, and develop and implement a system to provide those services so LEP persons can have meaningful access to them

• DOJ Guidance
  • Sets forth the compliance standards that recipients of Federal financial assistance must follow to ensure that their programs and activities normally provided in English are accessible to LEP persons
Federal Law Issues – Statutes and Regs

• ECOA/Regulation B and EFTA/Regulation E
  • Permits foreign language disclosures when accurate and English disclosures provided upon request. 12 C.F.R. §§ 1002.4(e), 1005.4(a)(2)

• TILA/Regulation Z
  • Requires providing information about trigger terms and required disclosures in the same language as the advertisement. 12 C.F.R. § 1026.24(i)(7)

• TRID
  • Requires providing information about trigger terms and required disclosures in the same language as the advertisement. 12 C.F.R. § 1026.24(i)(7)
Federal Law Issues – CFPB Considerations

• Supervisory Expectations
  • CFPB Examination Procedures, Mortgage Servicing, ECOA, Disparate Treatment in Loss Mitigation (June 2016)

• CFPB Supervisory Highlights, Issue 13, Fall 2016, p.21-24 (Oct. 2016)
  • Acceptable non-English practices
  • Compliance Management Systems (CMS)

• UDAAP
  • Guidance: CFPB Exam Manual and enforcement actions
  • UDAAP rulemaking on language access?
Federal Law Issues – CFPB Enforcement Actions

• In re American Express Centurion Bank, No. 2013-CFPB-0011 (Dec. 24, 2013)
  • Language consistency
  • Disparate operational practices

• In re Synchrony Bank, No. 2014-CFPB-0007 (June 19, 2014)
  • Unnecessary exclusions
Federal Law Issues – GSEs/FHFA/HUD

• FHFA/GSEs
  • New URLA; CFPB Notice of Approval
  • Preferred Language Question
  • Language Access RFI
  • Language Access Multi-year Plan

• HUD
  • “Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency” (Sept. 15, 2016)
State Law Issues – Statutory Examples

• California
  • Negotiations occurring primarily in Spanish, Chinese, Tagalog, Vietnamese or Korean require the lender to provide a translated contract or agreement to the borrower in the language in which it was negotiated. Cal. Civ. Code § 1632(a).

• Connecticut
  • Notice for a dishonored check must be provided in both Spanish and English. Conn. Gen. Stat. § 52-565a(g).

• Idaho
  • If the trust deed is in Spanish, the Opportunity to Request a Loan Modification and Loan Modification Assistance form also must be in Spanish. Idaho Code § 45-1506C(2)(b).
State Law Issues – Statutory Examples

• Oregon
  • Communicating or soliciting business and negotiating in a foreign language requires providing certain documents in both English and the other language. Or. Rev. Stat. § 86A.198(1)-(2).

• Rhode Island
  • Servicers must provide a mediation notice in English, Portuguese and Spanish. R.I. Gen. Laws § 34-27-3.2.

• Texas
  • If the terms of a home equity loan were negotiated in Spanish, a summary of those terms and other pertinent information must be provided to the borrower in Spanish. Tex. Fin. Code § 341.502(a-1).
LEP – Practical Implications

• What languages?
• What documents?
• How can we tailor our LEP policy to our business?
• Other considerations?
• What’s next?
Questions